

§ 1943.19 Security.

Each FO loan will be secured by real estate. Chattels and/or other security will only be taken as security as set forth in paragraphs (b) and (c) of this section. The total amount of security required will be the lesser of either 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. Security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, *i.e.*, a tract of land. All security taken, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with § 1943.25 of this subpart. If the applicant disagrees with the real estate values established, FmHA or its successor agency under Public Law 103-354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103-354 requirements. In cases when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with § 1910.3(d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Real estate security.* (1) A mortgage will be taken on all real estate acquired, or improved with FO funds, and by any additional real estate security needed to meet the requirements of this section.

(2) Security will also include items which are considered part of the farm and ordinarily pass with the title to the farm such as, but not limited to, assignments of leases or leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, and royalties from mineral rights.

(3) A first lien is required on real estate, when available. In addition, loans will be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA or its successor agency under Public Law 103-354 whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter, except as modified by the "Memorandum of Understanding-FCA-FmHA or its successor agency under Public Law 103-354," FmHA Instruction 2000-R (available in any FmHA or its successor agency under Public Law 103-354 office).

(4) Advice on obtaining security will be received from OGC when necessary.

(5) The designated attorney, title insurance company, or the OGC will furnish advice on obtaining security when a life estate is involved.

(6) Any loan of \$10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in subpart B of part 1927 of this chapter provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA or its successor agency under Public Law 103-354 loan being made simultaneously with the FO loan.

(7) The Departments of Agriculture and Interior have agreed that FmHA or its successor agency under Public Law 103-354 loans may be made to Native Americans and secured by real estate when title is held in trust or restricted status. When security is so taken on

real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor; and

(ii) The BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(b) *Chattel security.* Ordinarily, FO loans will not be secured by chattels. However, loans will be secured by chattels as follows:

(1) A first lien will be taken on equipment or fixtures purchased with loan funds whenever such property cannot be included in the real estate lien and the best lien obtainable on all real estate does not provide primary security for the loan.

(2) Chattel security will be obtained when the best lien obtainable on all real estate does not provide primary security for the loan.

(3) The same collateral may be used to secure two or more loans made, direct or guaranteed, to the same borrower. Therefore, junior liens on chattels may be taken when there is enough equity in the property. However, when possible, a first lien on selected chattel items should be obtained.

(4) Chattel security liens will be obtained and kept effective, as provided in subpart A of part 1962 of this chapter.

(c) *Other security.* (1) A pledge of real estate by a third party may be taken as security when the best lien obtainable on all real estate does not provide primary security for the loan.

(2) Other property may be taken as security when the best lien obtainable on all real estate does not provide primary security for the loan. Examples of such security include but are not limited to cash surrender value of life insurance, securities, patents and copyrights, and membership or stock in cooperatives and associations.

(d) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known

or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922-E (available in any FmHA or its successor agency under Public Law 103-354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(2) A lien will not be taken on property that cannot be made subject to a valid lien.

(3) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract being financed, improved, or otherwise used for collateral provides primary security for the loan(s).

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; personal vehicles necessary for family living or farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA or its successor agency under Public Law 103-354 and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Special security requirements.* When FO loans are made to eligible *entities* that consist of members who are presently indebted for an FO loan(s) as individual(s) *or* when FO loans are made to eligible *individuals* who are members

of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA or its successor agency under Public Law 103-354 for any other farmer program direct or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(g) *Same security.* Except as provided in paragraph (f) of this section, when an FO loan (direct or guaranteed) is made to a borrower who has other FmHA or its successor agency under Public Law 103-354 loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18677, Apr. 30, 1992; 59 FR 22961, May 4, 1994; 59 FR 25800, May 18, 1994; 62 FR 9356, Mar. 3, 1997]

§§ 1943.20-1943.22 [Reserved]

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) as well as subpart G of part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

- (i) Likelihood of flooding.
- (ii) Probability of flood damage.
- (iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA or its successor agency under Public Law 103-354 representatives will evaluate the proposal and record the decision in the loan docket in accordance with subpart G of part 1940 of this chapter.

(b) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA or its successor agency under Public Law 103-354 400-4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA or its successor agency under Public Law 103-354 that will be performed by a contract or subcontract of more than \$10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 of this chapter apply.

(d) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable environmental requirements including subpart LL of part 2000 of this chapter for assistance in implementation.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of subpart I of part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA or its successor agency under Public Law 103-354 will not discriminate against any applicant on the basis